

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MARK NOENNIG**, on January 16, 2003 at 3 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Mark Noennig, Chairman (R)
Rep. Eileen J. Carney, Vice Chairman (D)
Rep. Scott Mendenhall, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Rod Bitney (R)
Rep. Larry Cyr (D)
Rep. Ronald Devlin (R)
Rep. Gary Forrester (D)
Rep. Ray Hawk (R)
Rep. Hal Jacobson (D)
Rep. Jesse Laslovich (D)
Rep. Bob Lawson (R)
Rep. Penny Morgan (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)

Members Excused: Rep. Rick Maedje (R)

Members Absent: None.

Staff Present: Linda Keim, Committee Secretary
Connie Erickson, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

The time stamp for these minutes appears at the beginning of the content it refers to.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 238, 1/13/2003; HB 232,
1/13/2003
Executive Action: HB 238, HB 232

HEARING ON HB 238

{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.3}

Sponsor: REPRESENTATIVE JOAN ANDERSEN, HD 23, CARBON COUNTY

Opening Statement by Sponsor:

REP. ANDERSEN said this bill was supported by Montana Association of Counties (MACO) and concerns the short-term lease of a water appropriation right for road construction or dust abatement. Most of the changes are in Section 9 on the last page. There are several amendments.

EXHIBIT (loh09a01)

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 3.3 - 10.7}

Harold Blattie, Assistant Director MACO, said this bill was written at MACO's request because counties are not able to comply with the current 30-day notification requirement and they want to serve their constituency in a timely manner. The bill would exempt local government entities from the Montana Water Law for special uses.

John Prinkki, Carbon County Commissioner for 14 years, said he has been a dairyman, farmer, rancher, and irrigator for 35 years, so he sees this from two different perspectives. He supported HB 238 and said current requirements are onerous and cumbersome. Using water in this manner makes life easier for the irrigators, and that is why you don't hear any complaints from them. Those are private property rights, so it is only right that there is a written lease agreement. Notification would be easier for counties if they had this exemption.

Mack Cole, County Commissioner, Treasure County, said this bill will take care of something that has been going on for a long time. It will clear up things that could have created problems. He asked for a DO PASS on HB 238.

Mike Murphy, Montana Water Resources Association (MWRA), said is a realistic change that allows counties and local governments to do their job in a more effective and efficient manner. With the amendments presented, MWRA supports this bill.

Opponents' Testimony: None

Informational Witnesses:***{Tape: 1; Side: A; Approx. Time Counter: 10.9 - 13.2}***

Jack Stultz, Division Administrator for Water Resources Division, said they are responsible for the Water Use Act which is where this Statute applies. This Statute was passed in the last Legislature, and has arisen out of a long term situation that has been inconsistent. Recently water has become very precious in some areas of the state and some of the people conducting this kind of activity were in jeopardy. It had wide support from the old-timers, but some of the situations were becoming volatile, so they want to create an exemption from the existing water right process to allow these activities to go forward.

Questions from Committee Members and Responses:***{Tape: 1; Side: A; Approx. Time Counter: 13.2 - 23.8}***

REP. FORRESTER referred to lines nine and ten that require posting a copy of the Lease Agreement at the point of diversion.

Harold Blattie said that the notice would be posted at the irrigation ditch, making it easy to locate. When someone observed water being taken from an irrigation ditch, they could see the Lease Agreement on the spot to determine whose water was being used. If they were a downstream user, they could immediately determine whether that impacted their Water Right and notify the department. It was felt that this was a more effective way of providing notice than advertising it in the paper.

REP. FORRESTER asked how extensively water rights are researched. **Harold Blattie** said the only person that needed to be contacted would be the owner of the Water Right whose water was being leased. **REP. FORRESTER** inquired whether this would leave the county with any liability. **Harold Blattie** said, "The lease would be executed with someone who had an appropriate water right. For example, if you and I had an agreement, it would be your water, whether it was a superior or inferior right. Someone who had a superior water right could lay claim to that, and the temporary diversion would be immediately stopped pending investigation."

CHAIRMAN NOENNIG commented that he recalled that if there was a change of beneficial use under the Water Use Act, a permit is required. He asked if this superceded that requirement, because the beneficial use is for road-use, rather than for irrigation. **Jack Stultz** said that is correct. This statute, 85-2-410, carves an exemption out of the regular permitting requirement. It requires notification, public notice of that application, and opportunity to object; litigation or resolution of the

objections, or an administrative hearing. **CHAIRMAN NOENNIG** referred to page 2, lines 3-5 of the bill. Please clarify if that still applies to the government entity that is leasing it after the bill is passed. **Jack Stults** said that it did.

CHAIRMAN NOENNIG clarified that when you have deleted sub-paragraph 3(c) on lines 10-12 as they apply to government, by virtue of line 6 on page 3, there was a further limitation with regard to 60,000 per day for a series of leases, but you have made exception for that for the government entities. He asked for an explanation. **Jack Stultz** said that the concern is an adverse effect to existing Water Rights. The feeling was that if it was under 60,000 gallons a day, the jeopardy was very small to the existing Water Rights. If it gets greater than 60,000 gallons per day, there was a potential for impact, and some analysis should be done. It has been found that doing analysis leads people to find ways to modify their activities so they can avoid impacting someone else. The use by the county is under 60,000 gallons a day on any one lease, and on any one source. Having this provision still remain applicable to the counties would not restrict their ability to do what they need to do.

CHAIRMAN NOENNIG said that he needed further information as to why an exemption was needed if they were not going to take advantage of it. **Jack Stultz** explained that they were being exempted from the 30-day notice period in Section 4. This allowed them to respond quickly to meet maintenance or dust abatement needs that come up on short notice.

CHAIRMAN NOENNIG read page 3, lines 5-6 and (3)(c) on page 2 and questioned if that is part of the two day notice. **Jack Stultz** said that the original bill read that way, but Amendment 2 changes that.

CHAIRMAN NOENNIG asked for clarification that it has been changed to read "dust abatement only," and not road construction. **Jack Stultz** said that was right. With the amendments being focused only on the smaller amounts of water, and activities that are not scheduled or contracted for 30 days or more, it does mean that the counties are asking for dust abatement only. They don't want it construed as being for major construction projects.

Closing by Sponsor:

REP. ANDERSEN thanked the committee for a good hearing and urged a DO PASS with the amendments as presented.

HEARING ON HB 232

{Tape: 1; Side: A; Approx. Time Counter: 23.8 - 26.8}

Sponsor: REPRESENTATIVE RON DEVLIN, HD 3, EASTERN MONTANA

Opening Statement by Sponsor:

REP. RON DEVLIN said this bill is at the request of MACO and deals with their Capital Improvement Funds. It increases the limitation to \$500,000 on county road and bridge improvements because things are getting more expensive, and makes the bill easier to read by changing some of the language. Currently, counties have been allowed to set up a Capital Improvement Fund in only some areas. This bill will allow the fund to set up in all areas. The language is permissive to give more flexibility in managing funds.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 0.0 - 4.6}

Harold Blattie, Assistant Director Montana Association of Counties (MACO), said they have different ways of dealing with Capital Reserve, depending on the fund. The general Capital Improvement Program Statute is 7-6-616. It provided setting aside no more than 10% of the property tax levy in a Capital Reserve Fund for projects that are over \$5,000 and have a useful life of over 5 years. In some smaller counties, the math does not work out. Section 3 of the bill deals with the second resolution, the limitation on the Road and Bridge Fund; and an inflationary adjustment was needed for that number. There is no language relating to the 10% limitation. Section 4, County Fair Commission, and Section 5, Capital Improvement Fund for a Fair Board contain no limitation at all. Section 6 also authorizes a Fire District to have a Capital Improvement Fund, but there was no limitation as to the funds that could be put in.

This bill would consolidate these under a uniform set that would generally say that the governing body could set aside any monies that they chose into a Capital Improvement Fund or a Reserve Fund for good financial management. The 10% limitation is archaic and no longer applies because of other legislation.

Doug Kaercher, Hill County Commissioner and Second Vice President of MACO, said he spent five years on the Havre City Council before he became Commissioner. This bill gives counties authority that is similar to what the cities have for capital improvement and he supports the bill.

Opponents' Testimony: None

Informational Witnesses: None

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 5.4 - 10.4}

REP. MENDENHALL referred to section 3, an inflationary adjustment from \$200,000 to \$500,000 and commented that was pretty steep.

Harold Blattie said that he believed the \$200,000 was established in the 1980s, and inflation has had a big impact in that time.

REP. MENDENHALL asked how much a new grader costs. **Harold Blattie** said that it would depend upon the brand and the specifications.

CHAIRMAN NOENNIG said that it appeared that now every section has discretionary unlimited Capital Reserve Fund for each of these entities, with the exception of section 3, and that is inconsistent. **Harold Blattie** agreed that it was inconsistent and said he would not oppose striking the \$500,000 ceiling. In Yellowstone County, a Mill is worth \$220,000 and 10% of that is \$22,000. Ten years would easily amount to over \$200,000. The reason for unrestricted, is that a number of the funds have significant non-levy revenue coming in, particularly as there has been restructuring of taxable items. Some of what used to be tax revenue is now coming to local governments in the form of a non-levy revenue, primarily through the Entitlement Share, HB 124.

Closing by Sponsor:

REP. DEVLIN said that they also repealed one statute, 7-21-3414, which dealt with management of the Capital Improvement Fund. It contained the provision that all accrued interest would be deposited in the Fair Board account. He asked for a DO PASS.

EXECUTIVE ACTION ON HB 142

{Tape: 1; Side: B; Approx. Time Counter: 10.4 - 20.9}

CHAIRMAN NOENNIG said that HB 142 is the Environmental Impact Statement (EIS) with local government input. He advised that there will be a short presentation by the DEQ that covers the procedure that is used in the EIS with proposed input from local governments, how the federal system works and how you anticipate it working.... (inaudible).

Jan Sensibaugh, Director of the Department of Environmental Quality, stated that the presenter would be John North, Chief Legal Council.

John North, Chief Legal Council for the Department of Environmental Quality (DEQ), said that this bill deals with "scoping," which is the first thing you do when you start preparation of an EIS. A Request for Comment is put out, and a community meeting is held to allow people to voice their concerns over the proposed project. That information is then used to determine the scope of the EIS; what has to be analyzed, which issues will be emphasized, and what alternatives will be looked at in the EIS. Current rules provide for inviting the participation of affected federal, state and local government agencies, Indian tribes, and the applicant.

Mr. North said that this bill provides consultation with, and obtaining the comments of, a local government, which is a little more formal than inviting their participation. It might be by telephone, or at the scoping meeting. Local government designates someone who is the point of contact and then consults with them on a regular basis. The EIS Act provides 180 days to do an EIS and 60 days to do scoping. He said that he did not anticipate that doing this would add any time to the preparation of an EIS.

CHAIRMAN NOENNIG said that a statement was made that local government could not legally be allowed to be a cooperating agency, which apparently limited the ability of the local government to have input and gave rise to this bill. If there is not a significant change, how do you see that affecting what we perceived to be a prior position and maybe a new position on that kind of input. **John North** answered that MEPA rules provide for two kinds of agencies: 1) Cooperating Agencies actually prepare the EIS. For example: If they are issuing a permit to put in a mine and some of the land was state land, the Department of Natural Resources would be involved, so both have actions to take. (2) Participating Agencies cover someone that does not have jurisdiction, but does have expertise. Local governments are not under MEPA, so they are not cooperating agencies, instead they are Participating Agencies. It is a question of whether or not the name goes on the EIS or not. At the federal level, the same terms are used. You don't have to have your name on the EIS to be a cooperating agency at the federal level, but it is required at the state level.

CHAIRMAN NOENNIG said that current rules allow for participation by local governments, and this bill is for consultation. He asked if it is correct that they do not deem that to raise it to

the level of a cooperating agency. **John North** said, "That is correct." The way he saw the change is that current rules say: "We invite their participation, so we can do that any number of ways, including putting out a Public Notice, and local government can show up or not." With the language that says DEQ has to consult with local governments, there would be an individualized attempt made to contact them and solicit their comment.

Questions from the Committee:

{Tape: 1; Side: B; Approx. Time Counter: 18.7 - 20.0}

REP. DEVLIN said that one of the procedural questions that came up concerned a project that covered multiple jurisdictions, like a pipeline or a transmission line, and that inviting this many participants would be too cumbersome. He asked if that would be seen as a problem. **John North** said that he did not see a problem. "Under current rules, it says their participation is invited, so DEQ could consult with them anyway. The MEPA process would not be hampered in a multiple jurisdiction project."

REP. DEVLIN said that he had amendments that need to be prepared and should be done by Tuesday. **CHAIRMAN NOENNIG** said that they would postpone Executive Action on HB 142.

EXECUTIVE ACTION ON HB 238

{Tape: 1; Side: B; Approx. Time Counter: 20.4 - 22.4}

Motion: **REP. FORRESTER** moved that **HB 238 DO PASS.**

Substitute Motion/Vote: **REP. FORRESTER** moved that **HB 238 BE AMENDED.** Motion carried 16-0 with **REP. MAEDJE** voting by proxy.

Motion/Vote: **REP. FORRESTER** moved that **HB 238 DO PASS AS AMENDED.** Motion carried 16-0 with **REP. MAEDJE** voting by proxy.

EXECUTIVE ACTION ON HB 232

{Tape: 1; Side: B; Approx. Time Counter: 22.4 - 24.4}

Motion/Vote: **REP. DEVLIN** moved that **HB 232 DO PASS.** Motion carried 16-0 with **REP. MAEDJE** voting by proxy.

ADJOURNMENT

Adjournment: 3:53 P.M.

REP. MARK NOENNIG, Chairman

LINDA KEIM, Secretary

MN/LK

EXHIBIT (loh09aad)